

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

BRIAN RUNNELS, # 39145

PETITIONER

VS.

CIVIL ACTION NO. 5:10-cv-158(DCB)(JMR)

JACQUELYN BANKS, Warden

RESPONDENT

ORDER

This cause is before the Court on the respondent Jacquelyn Banks' motion to dismiss (**docket entry 7**), and on Chief Magistrate Judge John M. Roper's Report and Recommendation (**docket entry 23**). The Report and Recommendation (R&R) was entered in July 11, 2011, recommending denial of the respondent's motion. On August 24, 2011, the respondent filed objections to the R&R, based on new evidence. On August 29, 2011, the petitioner responded to the respondent's objections. On September 15 and September 21, 2011, the petitioner filed supplemental responses, including new evidence of his own with his September 21, 2011 filing. The Court therefore finds that the Report and Recommendation should be adopted in part, but that instead of denying the respondent's motion, the Court shall deny the motion without prejudice so that the respondent can file a new motion, and this matter shall be referred to Magistrate Judge Roper for further findings. Accordingly,

IT IS HEREBY ORDERED that Magistrate Judge John M. Roper's Report and Recommendation (**docket entry 23**) is ADOPTED in part as set forth herein;

FURTHER ORDERED that the respondent Jacquelyn Banks' motion to dismiss (**docket entry 7**) is DENIED without prejudice for the reasons stated herein;

FURTHER ORDERED that this matter is referred to Chief Magistrate Judge Roper for further Report and Recommendation.

SO ORDERED, this the 29th day of September, 2011.

/s/ David Bramlette
UNITED STATES DISTRICT JUDGE